

The Non-Final Office Action dated 11/10/03 has been reviewed. The Examiner's courtesy in extending an office interview on December 23, 2003 to discuss the references of record and the proposed amendments is appreciated.

The foregoing amendments are submitted to comply with the Examiner's requirement to avoid the necessity of color drawings, and more particular point out how applicant's invention is different from the *Eppich* reference, and add no new subject matter. The above amendments are supported by the preferred embodiments shown in Figs. 1 and 2 of the specification. Specifically, the claims were amended to more particularly describe how the cover is non-integral to the bank card terminal and directs contact forces onto the non-integral support surfaces not part of the bank card terminal upon which the bank card terminal rests. The cover also has openings to accommodate bank card terminal covers such that they can be removed and replaced without disconnecting the terminal cords. Support for the amendments is found in the specification and the drawings. The claim amendments are submitted now in an attempt to avoid the necessity of an appeal.

Claims 14 and 15 were cancelled, along with their corresponding drawings in Figs. 4 and 5 and description in the illustrated embodiments.

Applicant incorporates by reference its previous comments in the Third Amendment regarding the rejection of Claims 9 through 13 and 16, as amended, on the grounds of obviousness in view of the *Eppich* reference in the event an appeal is still necessary to resolve this matter.

The *Eppich* reference is a two part modular housing for electronic components having a box-like lower base unit to contain modular electronic components with upper surfaces including a keyboard, slot reader, displays, etc. in the upper surface. *Eppich* is preferably constructed of a polycarbonate material, which permits the component parts to be modularly interlocked with one another to effectively form a single housing unit (Col 11, lines 1-8). An integral cover with sidewalls forming an opening encasing the upper surfaces of the modules, when closed, is included such that its sidewalls fit within grooves in the top of the lower base unit to cover the electronic modules. (col. 6, lines 31 through column 8 lines 5). It thus has an integral dust cover, which is mounted on grooves on its modular container into which the electronic components are sealed. One of its objectives is "to provide a rugged modular housing unit for protecting the electronic

circuitry contained therein when the unit is utilized in a variety of different environments." Col. 2 lines 50-53. *Eppich* accomplishes this objective with a modular impervious housing container for electronic apparatuses, which may include an integral dust cover. *Eppich* is thus comprised of a closed bottom impervious container base with an open top into which various electronic components are inserted and interconnected. These electronic components are sealed within the impervious container base and covered with a keyboard top. The keyboard top may be covered with a dust proof hinged cover top fitting within a groove along the top of the keyboard top. Therefore, *Eppich* has an integral dust cover attached to its modular casing enclosing various electronic components therein to prevent dust and debris from getting into its keyboard. Shocks to this *Eppich* dust cover are therefore directed onto its base, which could affect the electronics. . Thus, the *Eppich* cover directs shocks, spills, dust, and liquids into grooves on the *Eppich* support surface of the electronic terminal itself. Consequently, the *Eppich* bank card terminal electronics may be severely damaged in a manner avoided by applicant's invention, which acts as a protective barrier to insure that shocks, spills, dust, and liquids contacting the cover are directed onto the non-integral support surface not a part of the bank card terminal.

Conversely, amended Claim 9 of applicant's invention is directed to a non-integral cover independent of and surrounding a bank card terminal. It is designed to contact and be supported by a non-integral support surface. Applicant's invention is a crush resistant cover with a closed top and extending sides defining an open bottom, which extends about and provides a barrier to protect bankcard terminals from falling objects, liquids, dust, and grease. The invention provides a protective independent housing surrounding the bankcard terminal itself to protect it from contact damage, which insures that the electrical components of the bankcard terminal are not affected. No similar force diverting structure is found in *Eppich*, which has an integral dust cover covering the keyboard as part of its housing unit.

The rejection of Claim 9, as amended, is therefore improper and should be withdrawn.

Nor does the *Eppich* Fig. 16 hinged dust cover embodiment disclose applicant's hinged embodiment of Claim 10. The *Eppich* Fig. 16 fails to suggest the embodiment of applicant's invention in the same manner, the same way, with the same components to be

considered an equivalent embodiment. The rejections of Claim 10 should therefore be withdrawn.

As *Eppich* does not contain a handle affixed to the cover, which is supported by the non-integral support surface, it does not disclose applicant's embodiment of Claim 11, and this rejection should also be withdrawn.

Although *Eppich* suggests a transparent cover, it does not suggest a cover supported by the non-integral support surface. It therefore does not disclose applicant's embodiment of Claim 12, and the rejection should be withdrawn.

Nor does *Eppich* suggest a shock absorbing seal affixed to the open bottom of the cover sidewalls as it does not contact a non-integral support surface. It therefore does not disclose applicant's embodiment of Claim 13 and the rejection should be withdrawn.

Claims 14 and 15 have been withdrawn.

The rejection of Claims 9 through 13, as amended, on the grounds of obviousness under 35 USC 103(a) as being unpatentable over *Eppich* (US 4,084,214) should therefore be withdrawn.

Nor does *Eppich* address the terminal cover embodiment of Claim 16, mounted on a vertical non-integral support surface independent of the bank card terminals and cover. To supply this deficiency, the Examiner has combined the Eckel et al, U.S. Patent No. 4,727,934 reference with *Eppich* even though nothing in the references themselves suggest combining them.

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." §2143 MPEP

"Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ 2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)

...

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPO2d 1430 (Fed. Cir.1990) §2143.01 MPFP

Without some suggestion in the references themselves to combine them in the manner suggested by the examiner, the combination was improper to reject Claim 16 embodiment. Further, although the Eckel et al component container may be mounted to a wall, it does not direct the shock from blows to the case away onto a non-integral vertical support surface to prevent damage to the electrical components. Therefore, nothing Eppich or Eckel et al suggests applicant's invention of Claim 16, and the rejection should be withdrawn.

The other references of record also fail to disclose applicant's invention of Claims 9 through 13, and 16, as amended. Takeda H[TAKEI] #11-316622 hardcover for keyboard and mouse is not designed for use with a bankcard terminal. J. Fletcher, U.S. Patent No. 2,263,946 broiler cover does not function as a bankcard terminal cover. Similarly, Kameyama et al., U.S. Patent No. 5,576,516 is a cover of battery connecting terminal and does not function similar to applicant's invention. Cooper, U.S. Patent No. 5,163,870 is a two part protective dust cover for computer components, which is not impervious to liquids, which can enter through side fan vents and includes fan means. Song, U.S. Patent No. 5,682,993 is a multipurpose container cover for transporting a notebook personal computer requiring straps zippers and fasteners and is not designed as a bankcard terminal cover. Ray, Des. 237,754 is a protective cover for an electronic data terminal with side openings therein, which could allow liquids to pass there through and is therefore not suitable as a bank card terminal cover. Similarly, Bennett, Des. 349,893 described a protection cover for a computer with a plurality of access ports pervious to liquids and is not designed for use with bank card terminals. The Forsythe, U.S. Patent No. 5,249,103 is a modular transaction terminal having a docking surface with a plurality of parallel grooves, which is not designed for use with bank card terminals. Kaplan et al, U.S. Patent No. 4,493,524 is a computer factory data collection terminal, which does not disclose a protective cover, which prevents contact with the terminal itself to prevent jarring of the electronics if the cover is accidentally hit. Roberts et al, U.S. Patent No. 5,438,184 discloses a terminal without a protective cover. Eckel et al., U.S. Patent No. 4,727,934 discloses a data collection terminal, which does not include a protective cover

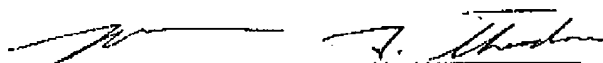
to prevent jarring of its electronics when the container enclosure is hit. Hiroaki, JP408194798A discloses a card reader, which also does not include a cover to prevent accidental shocks jarring of its electronics when the container enclosure is hit.

Nor do any of the above references disclose a cover for a vertically supported bank card terminal cover as described in amended Claim 16.

In view of the foregoing amendments to Claims 9 through 13, and 16, as amended, the art of record does not suggest or anticipate the references of record, and the amended claims should therefore be allowed.

If further claim amendments are required, a telephonic conference with the Examiner is requested.

Dated this 6th day of January 2004.



Marcus G. Theodore
Attorney for Applicant
Reg. No. 26,815
466 South 500 East
Salt Lake City, Utah 84102
(801) 359-8622

CERTIFICATE OF MAILING

I certify that I facsimile transferred to 703-⁸⁷²⁻⁹³⁰⁶~~308-7722~~ and mailed a true and correct copy of the Foregoing Fifth Amendment to Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, postage prepaid, this 6th day of January 2004.

